SUPREME COURT OF THE UNITED STATES.

No. 265.—October Term, 1923.

Transportes Maritimos do Estado, Plaintiff in Error, *vs.* Sylvio A. Almeida.	In Error to the District Court of the United States for the Southern District of New York.

[May 12, 1924.]

Mr. Justice Brandeis delivered the opinion of the Court.

Almeida, a seaman, brought this action for wages against Transportes Maritimos do Estado on the common law side of the federal court for southern New York. The defendant appeared generally; answered that it was a department of the Government of the Republic of Portugal; offered evidence in support of the allegation; and claimed the immunity of a sovereign from all process. The District Judge entered judgment for the plaintiff in an amount stipulated by counsel; allowed a direct writ of error from this Court; and issued the certificate of a jurisdictional question provided for in Section 238 of the Judicial Code.

This court is without jurisdiction of the writ of error. It was settled in *Oliver American Trading Co.* v. *United States of Mexico*, 264 U. S. — (decided since the entry of the judgment below) that the claim of sovereign immunity does not present a question of federal jurisdiction within the meaning of Section 238. This is equally true whether the claim of immunity is contested because of the character of the defendant or because the immunity is alleged to have been waived. The question involved here is not that presented in *The Pesaro*, 255 U. S. 216, and *The Carlo Poma*, 255 U. S. 219. There, the question requiring decision was whether Congress had conferred upon the district court sitting in admiralty power to entertain a suit against "a general ship engaged in the common carriage of merchandise by water, for hire" which, at the time of the arrest, was owned by the Italian Government and was in its possession. That question being one of the jurisdiction of the court as a federal court, the direct appeal was sustained in *The Pesaro* and the appeal to the Circuit Court of Appeals was ordered dis-

missed in *The Carlo Poma.* A related question was presented in *The Sao Vicente,* 260 U. S. 151, which was likewise a suit in admiralty. There, the writ of certiorari was dismissed. Compare *In the Matter of Transportes Maritimos do Estado,* 264 U. S. —.

As the writ of error from this Court was improvidently allowed, the case must be transferred to the Circuit Court of Appeals for the Second Circuit. Section 238 (a) of the Judicial Code, Act of September 14, 1922, c. 305, 42 Stat. 837. ***Smith* v. *Apple,* 264** U. S. —.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.